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25 June 1964

MEMORANDUM FOR THE RECORD

**SUBJECT: Proposed Regulation for Administration of the
 Central Intelligence Agency Retirement System
 (H. R. 8427)**

1. The proposed regulation for administration of the "Central Intelligence Agency Retirement Act of 1964 for Certain Employees" has required extensive study by this office. The retirement program envisaged by the legislation is new to the Agency and in some respects is novel in government. As a result it poses problems that are at best difficult from the point of view of administration of the program in both the initial phase of implementation and in the melding of the retirement machinery and procedures into existing Agency organizational and management structures. However, we believe the approaches to these problems recommended by the Director of Personnel and detailed in the proposed regulations are essentially sound and workable. Other than to commend them, we have little comment on the basic substance of the proposed regulations in our otherwise rather lengthy comment.

2. Our review, as is explained below, looks to the question of the face or image to be portrayed outside the Agency by the format and detail of this regulation. We do not pretend final answers to all the problems encountered by use of this approach (we recommend further study of some points noted), but we do believe that it may minimize the very real problems which may be anticipated in outside review. Although outside review is not of itself directly related to the administration of the program, it can aid or hamper our efforts to implement the program and can help or hinder the amendments to the legislation which will be desired next year and in future sessions of Congress. In the latter regard, it is

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noted that our relationships to the House Armed Services Committee may be expected to change markedly with the advent of a new chairman next year. The extent, although not the direction of change, may be measured in part by the changes already evident from the advent of a new chairman in the House Appropriations Committee. At the very least, publication of our retirement regulations in committee report to gain approval of the Congress of future amendments to our Act may be anticipated.

3. The regulations may well be the determining factor in possible legal actions to be undertaken by employees who are adversely affected by determinations under the Act or who are not included in the benefits of the Act in a situation such as surplus termination.

4. Looking to the present, our review and comments are conditioned by the following specific considerations:

a. Bureau of the Budget letter of 13 August 1962 which approved the proposed Agency retirement bill for forwarding by the Agency to Congress provides the "Agency regulations for the operation of the retirement and disability system and Agency criteria for selection of officers and employees to be eligible for coverage under the system, will be submitted to the Bureau of the Budget for approval prior to activation of the system."

b. The Jones amendment which was incorporated at section 201 (a) of H. R. 8427 during floor debate in the House of Representatives requires submission of Agency implementing regulations for congressional approval: "... such rules and regulations to become effective after approval by the chairman and ranking minority members of the Armed Services Committees of the House and Senate."

c. Review of the proposed regulations by the Bureau of the Budget and the Senate and House Armed Services Committees will be grounded in the authorities set forth in the Act with possible reference to some sections of the Foreign Service Act. Such review will not be concerned with Agency administrative

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or policy considerations that are not specifically related to the authorities detailed in the bill. Some consideration is necessary therefore to adhering more closely to a simplicity format such as that of the Foreign Service Retirement Regulations in order to minimize questions on matters such as delegation of authority or assignment of responsibility, and to avoid the questions generated by items such as the setting forth of reasons for or explanation of matters contained in the regulation.

5. Taking the first illustration noted, delegations of authority or responsibility:

(1) The delegations of authority or responsibility placed specifically in the Director of Central Intelligence by H. R. 8427 are set forth in Attachment A.

(2) The delegation of authority or responsibility placed specifically in the President of the United States, in the Secretary of State, and in the Secretary of the Treasury, by the corresponding retirement provisions of the Foreign Service Act, are detailed in Attachment B.

(3) The delegations of authority placed in the Director of Central Intelligence by H. R. 8427 which are placed in the Deputy Director (Support), in the Director of Personnel, and in the Director of Finance by the proposed regulations, are set forth in Attachment C.

(4) The delegations of authority to the Director of Central Intelligence by H. R. 8427 and which are placed in the Director of Central Intelligence by the proposed regulations are set forth in Attachment D.

(5) The very few delegations of authority or responsibility which are actually designated as such in the retirement regulation and the separation by selection-out portions of the Foreign Affairs Manual, Department of State, are set forth in Attachment E.

It is noted that these attachments are not intended to be exhaustive listings of the matters set forth therein. They are intended to illustrate the manner in which the statutory delegation of authority or responsibility has been

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treated by the Department of State under what is in fact our predecessor statute insofar as the retirement bill is concerned. It is noted also that the Foreign Service Retirement regulations have ostensibly been approved by the General Accounting Office under GAO's normal audit responsibility.

6. Consideration is given to the merit of placing the responsibility for selection of participants and the determination of voluntary, disability and involuntary retirement in the Director of Personnel to be assisted in all matters by a retirement board which would accomplish all reviews, recommend for selection under the program, etc., and with a medical board to be designated by the Chief Medical Officer to recommend directly to the Director of Personnel in the case of disability retirement. Appeal would be required in any instance where an individual is aggrieved, such appeal possibly to be an independent review by a panel separate from the retirement board which would certify to the Director for determination. At the very least, such a procedure as would allow not only determination by the Director but require it on behalf of an aggrieved individual is required to safeguard the authority set forth in 201 (c) that determinations made are final and conclusive and not subject to court reviews. Responsibility for the fund in like manner to be placed in the Chief of Finance to be assisted by a board designated in the regulations.

7. A direct corollary of the foregoing considerations is that the regulations be unclassified. For very obvious reasons, if the regulations are to have the utility necessary to support the retirement program they must be available for review under whatever circumstance.

8. Again under the considerations outlined, the alternative to placing the responsibility for the various matters contained in the statute in the Agency component or official most capable of fulfilling the responsibility, would be the detailing in the regulations of the Director of Central Intelligence's authority in the premises and the cumbersome task of outlining the Agency machinery for the conduct of the authority. Although it may be expedient in some few instances to merely specify the authority of the Director rather than, for instance, to set forth the responsibility of the Director of Personnel, we recommend against it in the initial processing of the regulations.

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9. Although the premises set forth above relating to outside review are considered valid, it has not been possible to test the conclusions drawn therefrom with the Bureau of the Budget or either of the congressional committees. It is recommended, however, that further development of the proposed regulations be continued in accordance with these considerations and in the interest of minimizing the procedural details and assignment of responsibility to be set forth in the regulations.



Assistant Legislative Counsel

Atts. 5

cc: Personnel

OGC/LC Subject - Early Ret. Leg. File

OGC/LC Chrono

Signer

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